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Report of
MINISTER'S ADVISORY COMMITTEE
on the
DEBENTURE APPROVAL PROCESS

October 1983

Honourable Julian Koziak
Minister of Municipal Affairs
224 Legislature Building
Edmonton, Alberta
T5K 2B6

Dear Sir:

We have the honour to present the final report of your committee on the Local Authorities Debenture Approval Process for your consideration.

Respectfully submitted

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INTRODUCTION

In the fall of 1981 the Deputy Minister of Municipal Affairs initiated a series of meetings with officials of Alberta cities to discuss problems and issues of concern in the municipal scene. One recurring problem cited by most cities was some difficulty experienced with the debenture approval process of the Local Authorities Board related to supplementary information requirements and time delays, all of which impact on the planning and execution of planned capital projects.

In the spring of 1982 a Minister's Advisory Committee on the Debenture Approval Process was established and mandated to:

- document and review the existing approval process for various types of debentures
- make recommendations to the Minister regarding any appropriate amendments to legislation or to the debenture approval process with respect to types of debentures and municipalities
- review methods of determining the borrowing capacity of Alberta municipalities and make recommendations to the Minister as to whether or not a limit or limits should be imposed and the means by which, if recommended, such limits should be inserted into the debenture approval process
- provide other relevant information, comment or recommendation deemed appropriate for the consideration of the Minister.

A membership representative of all municipal associations of elected and appointed officials, together with representatives from the Local Authorities Board, the Alberta Municipal Financing Corporation and Alberta Municipal Affairs was provided, as listed:

Alberta Association of Municipal Districts & Counties	Joe Smith, Reeve County of Barrhead No. 11
Alberta Urban Municipalities Association	Ken Fearnley, Mayor Town of Bon Accord
Alberta Rural Administrators Association	Otto Schuster, Administrator County of Parkland No. 31
City Clerks and Election Officers of Alberta	*Fiona Daniel, City Clerk City of St. Albert
Local Government Administrators Association	W. S. Gordon Stewart, Town Manager Town of Beaumont
Municipal Finance Officers Association - Alberta Chapter	Robert Ardiel, Commissioner of Finance and Administration, City of Medicine Hat
Alberta Municipal Financing Corporation	H. H. Strohbach, General Manager
Local Authorities Board	Bryan Clark, Board Secretary and Director of Administration
Alberta Municipal Affairs	R. W. Fleming, Manager Data Services and Statistics Municipal Services Branch
	J. M. Fleming, Director Municipal Services Branch (Committee Chairman)

*Robert Stollings, City Clerk of the City of Red Deer, resigned from the committee due to ill health.

The first meeting of the committee was held on May 31, 1982, and the concluding meeting was held on October 24, 1983.

This committee was established for the purpose of examining issues and the processes associated with municipal capital financing and to recommend actions that will enhance the process while at the same time retaining prudent and practical control measures.

The work of the committee was greatly facilitated by the formal submissions received from the aforementioned organizations setting out the view of their respective members. A comprehensive report prepared by the Finance Department of the City of Calgary, endorsed by the city's Finance and Budget Committee and letters from a number of finance officers provided the committee with significant insight to problems and situations from the municipal perspective as well as providing constructive suggestions

for change. A number of municipalities expressed satisfaction with the debenture approval system and complimented the Board. Almost all expressed satisfaction in dealings with Board personnel. It was evident that complaints lie with the approval process.

Charles Shelley, Chairman of the Local Authorities Board, provided the committee with a carefully prepared review and analysis of the submissions received. His depth of knowledge of the municipal environment and his experience in the municipal capital financing field enabled him to provide candid advice from the regulatory agency point of view.

For all of the expressions of concern, the suggestions and the recommendations proffered, the committee is sincerely appreciative.

SUMMARY OF RECOMMENDATIONS

1. That an independent consultant, well experienced in the municipal and financial fields, be retained to consult with municipalities of different sizes, the Local Authorities Board and the Alberta Municipal Financing Corporation to establish a working formula or model regarding borrowing/debt guidelines and/or limitations that can be easily administered and readily understood by all concerned.

2. That the Local Authorities Board amend its procedures in the debenture approval process to eliminate the requirement for a Board certificate and to permit a municipality to call for tenders on a project prior to advertising the by-law provided the date established for accepting tenders allows sufficient time to advertise the by-law in accordance with the enabling legislation.

3. That the Local Authorities Board review the tariff of fees schedule for reasonableness and implement a maximum tariff. Consideration should also be given to modifying the refund policy. Where significant reduction in the borrowing occurs, the tariff fee should be reduced accordingly.

4. That the Local Authorities Board, at its discretion, accept declarations of project costs prepared by a qualified municipal official, in lieu of requiring bids or tenders for final borrowing approval.

5. That the Local Authorities Board accept a statutory declaration signed by the appropriate municipal official quoting verbatum the complete statement of the purpose of the petition received from the petitioners in respect of local improvement by-laws, in lieu of submitting a copy of the actual petition received.

6. That the debenture by-law format be amended to provide that debenture by-laws may provide for the early redemption of debentures without requiring that an application for cancellation and substitution be submitted to the Local Authorities Board for approval.

7. That section 353 of the Municipal Government Act be clarified to more clearly define the type of projects that may be approved under the authority of this section.

8. That section 330(2) of the Municipal Government Act be repealed to eliminate the ambiguity with section 329(1)(b)(iii).

9. That section 149(2) of the Municipal Taxation Act be amended to provide that multiple local improvement projects in the same location and with the same term, may be detailed on separate schedules within the same by-law; the details in each schedule to include:

   (a) a brief statement of the purpose
   (b) the properties to be assessed
   (c) the costs assessable to the properties
   (d) the rates to be charged for the separate projects.

10. Notwithstanding section 70 of the Local Authorities Board Act, municipalities be given the authority to include in the cost of a municipal project for which debentures are to be issued, the value of land

   (a) which has been acquired for the project
   (b) which has been acquired for another purpose and is transferred to the project
   (c) which has been, or is to be, acquired from another owner in exchange for land owned by the municipality,
   (d) which is to be acquired for the project

   at the current market value as determined by an independent appraisal, or the cost of acquisition, whichever is lower.

   For the purpose of this recommendation, the municipal project does not include the purchase of land for development and/or resale for future residential, commercial or other industrial purposes.

ISSUES AND SUGGESTIONS

The reports of representatives of the associations set out the issues expressed by their members about the debenture approval process. These are summarized as follows:

1. The debenture approval process is too lengthy from initial application to receipt of a certificate authorizing the borrowing and commencement of the project.

2. The Board requires too much detailed documentation in support of applications.

3. The turn-around time in the Board's process is too long. This, coupled with poor mail services to some parts of Alberta adds to the problem.

4. City representatives expressed concern that the Local Authorities Board has increased its information requirements in recent years thus adding to the processing time and causing increased workloads.

5. The Board should not act as a monitoring agent for government departments. (As an example, approval certificates from Alberta Environment.)

6. The Board's tariff of fees for debenture applications is inequitable. It is not related to the cost of service provided and should be reviewed.

7. The requirement of the Board that municipalities may not award contracts or commence any work until a certificate is issued causes a serious hardship to those municipalities who issue many debenture by-laws each year, including many projects that may require construction scheduling over a period of more than one year.

Some suggestions for change were made:

- It is desirable that criteria be developed to determine prudent debt limits or guidelines applicable to municipalities.
- The Board should give recognition to and provide a different process for classes of municipalities based on factors such as financial condition, debt load, size and complexity of operations, financial expertise, established fiscal policies or other appropriate criteria.
- The Board should not determine program priorities for municipalities.
- Applications should not be held up pending receipt of Environment permits.
- A single by-law, with separate schedules for different local improvements in the same benefitting area, should be accepted by the Board.
- A municipality, having received a Board Order, should be able to call for tenders and award the contract if the tender amount is not greater than the amount cited in the by-law.
- The Board should update its Guide to Applications manual on a regular basis to clarify the Board's procedures and requirements. The Board should also establish more frequent personal contact between the members of the Board, municipal officials and municipal associations. This should help to avoid errors and omissions and expedite the approval process.
- Engineers' estimates should be accepted by the Board in lieu of providing costs based on tenders.

The foregoing concerns and suggestions have been summarized from written and oral submissions to the committee reflecting the perspective of the municipal practitioner. These must be considered in light of the role of the Local Authorities Board and legislation dealing with all aspects of municipal capital financing.

If an application received by the Board is correct and is accompanied by all supporting documents the processing time has been demonstrated to be reasonable. The Board requires a municipality to submit documentation necessary to show compliance with legislation and to confirm costs, all of which is germane to the application.

All requirements imposed either by statute or by the Board are intended for the protection of the citizens and the municipal corporation.

HISTORICAL OVERVIEW

The scope of activity and the progress of the development of municipalities in Alberta has inevitably been influenced by the economy of the province and the provincial government policies and programs.

The hungry thirties followed by the war years halted virtually all municipal development for nearly two decades. The post-war period saw unprecedented demand for new housing and attendant infrastructure requirements. The Leduc oil discovery proved to be a pivotal point in the economic development of Alberta and its municipalities by providing new revenues needed to meet the costs of growth.

In 1950 the *Self-Liquidating Projects Act*, Chapter 65, S.A. 1950, was passed authorizing the Provincial Treasurer to enter into agreements with municipalities and to make loans for the construction of self-liquidating utility systems or extension at an interest rate of 2% per annum.

The *Municipal Capital Expenditure Loans Act*, Chapter 81, S.A. 1953, provided for the establishment of a revolving fund to finance municipal capital expenditure projects at a maximum interest rate of 3½% per annum.

These programs, as well as others that followed, provided necessary capital funds to meet the pressing requirements of growth and development throughout the province.

Without a doubt the most significant influence on capital financing for municipal, school and hospital expenditures was the incorporation of the Alberta Municipal Financing Corporation in 1956. This corporation was established as a vehicle to assist municipalities and other local entities, in financing their capital programs. The corporation would raise funds and purchase municipal debentures. Two significant advantages accrued to the municipalities: they were spared the costly and exacting process of marketing their own debentures and they obtained capital funds at the best possible interest rates from

an assured source.

The corporation established annual borrowing limits for municipalities at $40.00 per capita. In 1967 the limit was increased to $50.00 per capita but this limit was not applicable to loans for water and sewer. The limit was increased to $60.00 in 1973 and was removed in 1974.

The corporation has made loans in excess of $4 billion since its incorporation. All of this represents an investment in capital assets in every part of the province and has served to build Alberta and improve the quality of life for its residents. Loans to municipalities have increased from $58 million in 1973 to $913 million in 1982.

In 1974 the government introduced a program which provided an interest subsidy to municipalities on loans from the Alberta Municipal Financing Corporation for general municipal purposes. All qualifying loans were subsidized for interest charges in excess of a base amount, 8% in 1974, raised to 9% in 1980 and 11% in 1981. During this period interest rates rose from 9.75% to a high of 19% on a twenty-year debenture. In 1983 a decision was taken that full responsibility for debt service management would be returned to municipal councils. The subsidy program was terminated for new debenture issues. The subsidy payments will continue to be made on behalf of all past commitments. The rebates to municipalities from 1975 through 1983 are estimated in excess of $300 million.

Under the provisions of the Municipal Debt Reduction Act, passed in 1979, $648 million of municipal debenture debt obligations were cancelled and an additional $383 million was paid to municipalities. This represented a "once only" distribution of a share of provincial revenue surpluses to reduce municipal debenture debt. These transfers, based on a formula of $500 per capita, eased the current debt repayment load and provided funds for discretionary spending.

Provincial government departments over the years have contributed capital funds to municipalities. Hundreds of millions of dollars have been provided as conditional grants to develop new or improved capital works in transportation, environmental protection, parks and recreation and utilities functions.

The recent downturn in the economy has forced governments at all levels to seriously review their revenue and expenditure patterns and adopt more realistic program objectives within their ability to pay and to maintain acceptable tax levels. The financial relationship between the province and its municipalities must be carefully examined to ensure that prudent financial management at the municipal level is maintained and is not unduly influenced by government largesse or undue influence in program initiatives.

THE LOCAL AUTHORITIES BOARD

A. ROLE AND JURISDICTION

The Local Authorities Board Act, passed in 1961, established the Local Authorities Board. Prior to this the debenture approval and other related functions were dealt with by the Public Utilities Board and its predecessor the Board of Public Utility Commissioners.

The Act sets out the jurisdiction and authority of the Board in dealing with municipal financial matters:

> *"27. The Board has all the necessary jurisdiction and power*
>
> *(a) to inquire into the merit of any application of a local authority for permission to raise money by way of debenture or on the security of stock as provided in this Act;*
>
> *(b) to supervise the expenditure of money borrowed by a local authority as provided in this Act;*
>
> *(c) to deal with the financial affairs of local authorities, as provided in this Act;*
>
> *(d) to grant permission for the extension of time for repaying the indebtedness incurred by a local authority for the cost of its public works as provided in this Act."*

The Act places constraints on municipalities and other local authorities in respect of capital borrowing:

> *"70. When for the purpose of a work or undertaking or for the acquisition of property or for any other object within its powers a local authority desires to raise money by way of debentures, the local authority shall apply to the Board for authority to do so before commencing or undertaking the works or project."*
>
> *"71. In the case of a municipality, the application to the Board shall be made before or forthwith after the first reading of a by-law providing for the debenture and before the by-law is submitted to a vote of the proprietary electors of the municipality."*

The Act specifies the general requirements for applications to the Board:

> *"74. An application shall be addressed to the secretary of the Board and shall be accompanied:*
>
> *(a) in the case of an application by the council of an urban municipality, by a certified copy of the proposed by-law providing for the debenture,*
>
> *(b) in the case of an application by other local authorities, by the documents prescribed by the statutes, if any, governing the application, and*
>
> *(c) by any other information the Board may require."*

The Act sets out the manner in which the Board shall conduct its inquiry into applications:

> *"75(1) The Board in conducting its inquiry and in arriving at its decision shall consider the nature of the work, undertaking or other object of the proposed debentures, the necessity for or expediency of it, the financial position of the local authority and all other matters that in the opinion of the Board call for consideration.*
>
> *(2) The Board in the course of an inquiry may summon and examine on oath any person whose evidence it desires to obtain, and may fix a date for the hearing of all parties interested in the granting or refusing of an application, in which case it may order that proper public notice be given of the hearing."*

The general powers of the Board are set out in section 28:

> *"28. In matters within its jurisdiction the Board may order and require any person or local authority to do forthwith or within or at any specified time and in any manner prescribed by the Board, so far as it is not inconsistent with this Act or any other Act conferring jurisdiction, any act, matter or thing which that person or local authority is or may be required to do under this Act or under any other general or special Act, and may forbid the doing or continuing of any act, matter or thing that is in contravention of any such Act or of any regulation, rule, order or direction of the Board."*

B. APPLICATION REQUIREMENTS

Debenture borrowing by-laws for municipal capital expenditures are usually authorized under one of three enabling sections of the Municipal Government Act:

Section 324 - This section applies to capital projects that require the assent of the proprietary electors or the electors, as the case may be. A by-law may be submitted for a vote directly, or, may be advertised in accordance with the provisions of this section which permits a petition for a vote on the money by-law.

Section 329 - This section applies to debenture borrowing for the construction of local improvements as defined in section 149 of the Municipal Taxation Act. A local improvement by-law may be initiated either by petition of the registered or assessed owners in a benefitting area (section 156), or by a notice of intention published by the municipality (section 157).

Section 353 - Debenture borrowing by-laws may be initiated for certain works or projects authorized under this section. A by-law authorized under this section does not require the assent of the prcprietary electors or publication pursuant to section 324 if passed by a vote of 2/3 of the whole council and is approved by the Local Authorities Board.

The different requirements of the aforementioned sections are monitored by the Local Authorities Board to ensure that applications meet all statutory requirements. The information requirements and procedures of the Board vary to some extent for each type of application.

C. THE DEBENTURE APPROVAL PROCESS

The approval process of the Board is undertaken in two steps which include the issuance of a Board Order conditionally approving the application, followed by the promulgation of a Board certificate when all of the conditions of the Order have been fulfilled. Upon receipt of a certificate, the municipality may commence the project and proceed to issue debentures.

1. Application for a Board Order

(a) Municipal Requirements

In all applications to the Board for an order to approve the issue of debentures, the municipality submits a certified copy of a debenture by-law after first reading by the council accompanied by:

- a copy of the project cost estimates prepared by an engineer, architect or a qualified person acceptable to the Board
- confirmation of any sources of capital funds that may accrue to the project by grants or contributions, either received or receivable
- a Department of Environment permit to construct, if applicable (section 76, Local Authorities Board Act; sections 4 and 11.1, Clean Water Act, and section 338(1)(f), Municipal Government Act)
- a cheque payable to the Provincial Treasurer re: the Board's tariff of fee schedule
- a copy of the municipality's latest financial statement.

If the application is for the purchase of land the Board may also require a copy of the option to purchase agreement and/or a report from a qualified appraiser. In cases where the land is located in another municipality, a letter of consent to purchase is required from the site municipality. (Section 126, Municipal Government Act)

(b) Local Improvement By-laws

In addition to the foregoing, all local improvement by-laws will have an attached schedule showing the properties to be assessed, the total special assessment against all properties, the total assessment per front foot and the annual rate of assessment per front foot per year.

Local improvement by-laws must also be accompanied by additional documentation:

(i) by-laws initiated as the result of a petition require:
- a copy of the petition received and a declaration of the municipal secretary as to its sufficiency
- a map showing the exact location of the proposed local improvements and the properties to be assessed

(ii) by-laws initiated by a notice of intention by council require proof of publication of the notice; a declaration from the municipal secretary that a petition against the local improvement signed by a sufficient number of property owners was not received and a map as cited above.

(c) Review Considerations by The Local Authorities Board

Upon receipt of an application from a municipality, the Board undertakes a review of the by-law and its supporting documentation to ensure that all is in order and that statutory conditions have been met. In this area the Board has no choice but to enforce the requirements of the legislation. The statutes set out the requirements and they must be fulfilled or the municipality could be challenged in court resulting in costly delays.

Poorly prepared by-laws, improper advertising or other legal deficiencies must be corrected and this causes delays in processing that could be reduced or eliminated by more careful attention to the processing requirements promulgated by the Board.

Another important area of Board review is the financial position of the municipality including its economic and financial viability. Evaluations of balance sheets and financial statements, trends of growth in revenues and expenditures, existing debt and its impact on mill rates, as well as evidence of prudent financial management, or lack thereof, are examined. In some instances there may be a need for additional information in this area. This is recognized as an important Board function and has not been expressed as a problem area by municipal practitioners.

On the completion of its review and being satisfied that the application meets all legal and financial requirements, the Board issues an Order authorizing the issuance of debentures by the municipality. The Board Order specifies the maximum amount of the debenture borrowing and the purpose for which the borrowing is to be used.

At this stage the by-law has not been passed by council, therefore, the Order is issued subject to conditions. These will vary for by-laws passed under different sections or Acts.

The Board also makes provisions as to the manner in which proceeds from the sale of debentures will be dealt with. The proceeds shall be applied only for the purpose for which the indebtedness was created, i.e. stipulated in the approved by-law.

In the event funds are received for the project from any other sources (grants or donations, etc.) prior to issuing debentures, such funds shall be used in full to finance the project and reduce borrowing requirements. In the event funds are subsequently received for the project, they shall be applied in full to reduce or cancel the debenture debt for the project.

If temporary financing has been received for the project pending the issue and sale of debentures, the Board requires that the proceeds from the sale of debentures shall firstly be applied to repay the temporary borrowing obligation.

The Board Order provides that the municipality may not award a contract until a Board certificate is received.

By a letter accompanying the Board Order, the municipality will be informed of any changes required in the by-law, procedural matters to be completed and any other information to be provided before applying for a Board certificate.

The flow charts in Appendix A depict the sequence of events in the debenture approval process established by the Local Authorities Board.

2. Application for a Certificate

Every Board Order provides that no work shall be commenced, nor any expenditures made, or obligations created for the project, and the debenture shall not be signed until:

- a declaration has been filed with the Board that the project cost will not exceed the amount established by the by-law, and
- the by-law has been given second and third readings and the municipality has received from the Board a certificate stating that the statutory provisions have been fulfilled.

The certificate process and attendant documentation enables the Board to certify that the municipality has complied with the appropriate statutory requirements and is authorized to issue debentures.

Upon receipt of the Board Order the municipality may call for tenders for the project but may not award a contract until a Board certificate is received. This requirement of the Board is to ensure that the cost of the project will not exceed the amount authorized by the by-law. In most cases the Board requests that copies of the tenders be submitted for review. This requirement does not pose any problems as a general rule when borrowing by-laws are for a single project that will be completed within a year and are covered by specific contracts within that period.

Serious problems arise in cases where a by-law may provide funding for two or more projects, over a period of more than one fiscal year, which may require several tenders at various stages.

If initiating a by-law under sections 324 or 329 of the Municipal Government Act the municipality must now proceed to obtain the assent of the electors either by advertising the by-law or by submitting the by-law to a vote of the electors. In either case, the process involves a minimum of approximately two months time.

By-laws passed under the authority of section 353 do not require the assent of the electors if passed by a vote of at least two-thirds of the members of council and approved by the Local Authorities Board. The processing time in these cases is relatively short.

When all processes are complete the municipality gives final reading to the by-law and submits a certified copy together with an application for certificate and all required supporting documentation.

The Board, if satisfied, issues the certificate for the full amount of the loan requested. On staged projects, control is exercised by the Local Authorities Board by advising Alberta Municipal Financing Corporation by memorandum, of any borrowing restrictions. The municipality is in a position to issue and sell debentures.

OTHER PROVINCIAL JURISDICTIONS

The committee looked at the existing borrowing guidelines and approval procedures in some of the other Canadian provinces. The research was conducted by the Alberta Local Authorities Board and their survey results are as follows:

SASKATCHEWAN

Local Government Board Act

DEALING WITH LOAN APPLICATIONS

"26(1) The board shall, in conducting its inquiry and in arriving at its decision, consider and take into account the following factors:

(a) the period over which the indebtedness may be spread, based on the lifetime of the work or undertaking for which the application is made, as may be estimated by the board;

(b) any provincial financial assistance that may be available in support of the work or undertaking;

(c) the economic base on which the loan can be supported and the present and contemplated economic conditions in the community, with due allowance being given for change in the economic base or conditions;

(d) the impact of the work or undertaking on the total financial and budgetary position of the local authority;

(e) the impact of the work or undertaking on the revenue demands and taxation levels of the local authority;

(f) the level of services which the local authority is committed to provide and the estimated impact on the provision of those services on its ability to repay the loan over the period of repayment;

(g) any outstanding long-term financial commitments of the local authority and, in particular but without restricting the generality of the foregoing, any outstanding debentures and existing obligations of the local authority with respect to superannuation plans;

(h) such other matters as, in the opinion of the board, relate to the local authority's ability to assume the liability of the proposed loans.

(2) In exercising the authority vested in it by virtue of subsection (1), the board may advise the local authority of the probable impact of approval of the proposed loan on the ability of the local authority to assume further indebtedness. 1976, c. 32, s.4".

NEW BRUNSWICK

Municipal Capital Borrowing Board

The Municipalities Act and its regulations limit the capital borrowing of the municipality to 2% of its assessed valuation in any one year and the total maximum borrowing must not exceed 6% of the tax base.

The above restrictions do not apply to capital expenditures for water and sewer facilities, repayment of which is on a user charge basis. However, authority to borrow capital money for water and sewer services must be obtained from the Municipal Capital Borrowing Board and the Lieutenant Governor in Council in the same manner as for other capital expenditures.

PRINCE EDWARD ISLAND

A guarantee by the Lieutenant Governor in Council under subsection (1) of the Town and Village Debenture Guarantee Act, shall not exceed ten per cent of the total of the market value assessments of the taxable real property in the town or village: the total of the market value assessments of the taxable real property shall be in such amount as shall be determined by the Director of Assessment of the Department of Finance.

MANITOBA

Loans to Municipalities and School Districts by Municipal Board

In dealing with any application the board shall consider:

(a) the nature of the work, undertaking or object proposed;

(b) the necessity or expediency thereof;

(c) the financial position of the local authority; and

(d) any other relevant matters;

and may refuse the application or require the local authority to vary the application, or may grant the application, in whole or in part, or subject to conditions.

ONTARIO

Ontario Municipal Board

Borrowing Limitations : Large municipalities - 25% of revenue
Small municipalities - 20% of revenue

BRITISH COLUMBIA

Inspector of Municipalities

Borrowing limitations: Not to exceed 20% of past three years average assessment plus total net worth of utilities.

NEWFOUNDLAND

Municipal Financing Corporation Act

Borrowing Limitations

Section 16 of Act

"(2) The aggregate of guarantees under this section shall not exceed a limit to be fixed, from time to time, by the Lieutenant Governor in Council and it shall be the duty of the Minister to see that this aggregate is not exceeded."

RECOMMENDATIONS

RECOMMENDATION ONE: *Borrowing Guidelines or Limitations*

It is recommended that an independent consultant, well experienced in the municipal and financial fields, be retained to consult with municipalities of different sizes, the Local Authorities Board and the Alberta Municipal Financing Corporation to establish a workable formula or model regarding borrowing/ debt guidelines and/or limitations that can be easily administered and readily understood by all concerned.

This is a very complex task requiring the assistance of a consultant to ensure that consideration would be given to a large number of varied economic factors and that maximum flexibility will be provided in the application of such guidelines.

The General Manager of the Alberta Municipal Financing Corporation expressed his concerns about the current municipal capital borrowing trends:

> "In the past five years, annual municipal loans have nearly tripled and municipal debt owing to the AMFC has more than doubled in size, according to the attached statistics.
>
> The total borrowings and outstanding debts would undoubtedly have been much higher had the Province not provided some $400 million cash grants and $570 million in debt forgiveness in 1979 under the Municipal Debt Reduction Programme.
>
> When new loans issued by AMFC to municipalities are adjusted for inflation, the average annual increase in new loans still amounts to 16.5% or 82.6% for the five year period 1978 to 1982.
>
> Since these new loans must eventually be repaid by Alberta taxpayers, it seems appropriate to compare the growth in loans with the growth in disposable personal income of Albertans: while disposable per capita personal income increased an average of 11.8% per annum or 58.9% on a cumulative basis, new loans issued increased by an average of 34.5% per annum or 172.5% cumulative for the years 1978 to 1982. In other words, new loans issued increased almost three times as fast as disposable personal income.
>
> In our opinion, these increases cannot continue and alternatives must be considered to control the growth of municipal borrowings."

The committee shares these concerns.

Although recent indicators show that the growth in municipal borrowing is moderating, the committee expressed serious concern about the continuing high rate of growth in school jurisdiction debt. Because school debt must ultimately be paid for by local municipal taxpayers, the committee suggests that the impact of school debt be also reviewed by the consultant.

RECOMMENDATION TWO: Application Procedures - Elimination of Board Certificate

It is recommended that the following procedural changes be adopted:

1. That with respect to by-laws under the authority of section 324 of the Municipal Government Act:

   A municipality may call for tenders prior to, or in conjunction with, the advertising of by-laws under the authority of section 324, provided the tender acceptance date allows sufficient time to advertise the by-law.

   The municipality shall advertise its borrowing by-law on estimated or tendered costs, and in a form provided or approved by the Local Authorities Board. However, if tendered costs are more than 10% higher than advertised costs, re-advertising may be required by the Board.

   If no petition for a vote is presented, the municipality may pass the by-law, award the tenders conditional on the Local Authorities Board approval and submit the application to the Local Authorities Board with all supporting documents.

   The Local Authorities Board may issue an order approving the by-law, after which the municipality may unconditionally award the contract.

   The Local Authorities Board Order will be revised to certify that the municipality has complied with the Act and debentures may then be issued.

2. By-laws under the authority of section 329 of the Municipal Government Act:

(a) Local Improvement Initiated by Council

A municipality may call for tenders prior to, or in conjunction with, advertising by-laws falling under the authority of section 329 provided that the tender acceptance date allows sufficient time to advertise the by-law.

The municipality shall advertise its local improvement by-law using estimated or tendered costs and in a form provided, or approved, by the Local Authorities Board. However, if tendered costs are more than 10% higher than the estimated costs, re-advertising may be required by the Board.

If no sufficient petition against the local improvement is received, the municipality may pass the by-law, award the contract conditional on the Local Authorities Board approval and submit the by-law to the Local Authorities Board with all supporting documents.

The Local Authorities Board may issue an order approving the by-law, after which the municipality may unconditionally award the contract.

The Local Authorities Board Order will be revised to certify that the municipality has complied with the Act and debentures may then be issued.

(b) Local Improvement by Petition

Upon receipt of a sufficiently signed petition, the municipality may advertise for tenders.

Upon receipt of tenders, the municipality may pass the by-law, award the contract conditional upon Local Authorities Board approval and submit the by-law to the Local Authorities Board with all supporting documentation.

The Local Authorities Board may issue an order approving the by-law, after which the municipality may award the contract.

The Local Authorities Board Order will be revised to certify that the municipality has complied with the Act and debentures may then be issued.

3. *By-laws under the authority of section 353 of the Municipal Government Act:*

The municipality may, if it wishes, call for tenders.

Upon receipt of the tenders, the municipality may pass the by-law, award the contract conditional upon Local Authorities Board approval and submit the by-law to the Local Authorities Board with all supporting documentation.

The Local Authorities Board may issue an order approving the by-law, after which the municipality may unconditionally award the contract.

The Local Authorities Board order will be revised to certify that the municipality has complied with the Act and debentures may then be issued.

NOTE: For all of the above, a municipality may, if it wishes, submit the proposed by-laws and advertising to the Local Authorities Board for an administrative review prior to the passage of same.

This recommendation embodies significant changes which will, if adopted, enable municipalities to call for tenders prior to advertising the by-law and receiving a Board Order. The Board certificate will be eliminated and a revised Board Order would be issued to certify that the municipality has complied with the statutory requirements and is authorized to issue debentures.

The committee believes that the implementation of these proposals will add flexibility and shorten the duration of the approval process.

RECOMMENDATION THREE: *Local Authorities Board Tariff of Fees Schedule*

It is recommended that the Local Authorities Board review the Tariff of Fees Schedule for reasonableness and implement a maximum tariff. Consideration should also be given to modifying the refund policy. Where a significant reduction in the borrowing occurs, the tariff fee should be reduced accordingly.

Submissions to the committee have expressed concern about the Board's tariff of fees for debenture applications. At present fees are based on the amount of the debentures to be issued and in fact, bear no relationship to the cost of processing the applications for either large or small amounts.

RECOMMENDATION FOUR: *Cost Declarations in Lieu of Tenders*

It is recommended that the Local Authorities Board, at its discretion, accept declarations of project costs prepared by a qualified municipal official in lieu of requiring bids or tenders for final borrowing approval.

This is particularly important in cases involving projects which span more than one year or in complex projects that involve many bids or tenders for phased construction.

The committee believes that flexibility, rather than detailed, specific procedures and regulations is desirable. The committee trusts that the Local Authorities Board will process its Orders without requiring detailed documentation - particularly if they have not had any significant problems with the applying municipality.

RECOMMENDATION FIVE: *Submission of Petitions re: Local Improvements*

It is recommended that the Local Authorities Board accept a statutory declaration signed by the appropriate municipal official quoting verbatum the complete statement of the purpose of the petition received from the petitioners in respect of local improvement by-laws, in lieu of submitting a copy of the actual petition received.

This will save the unnecessary expense of photocopying, mailing and filing of petitions in their entirety.

RECOMMENDATION SIX: *Early Redemption of Debentures*

It is recommended that the debenture by-law format be amended to provide that debenture by-laws may provide for the early redemption of debentures without requiring that an application for cancellation and substitution being submitted to the Local Authorities Board for approval.

It may be in the interest of municipalities that early redemption of debentures be provided for where feasible. This recommendation, if implemented, will eliminate the requirement of an application to the Local Authorities Board.

RECOMMENDATION SEVEN: *Clarification of Legislation*

That section 353 of the Municipal Government Act be clarified to more clearly define the type of project and circumstances under which a municipality must gain authority by use of this section.

There is uncertainty as to what projects qualify for processing under this section and what projects the Board may require to be processed under section 324. In some circumstances the municipality may initiate a by-law under section 353 and find, upon application, that the Local Authorities Board requires that the project be advertised as provided in section 324. These discretionary decisions cause delays which, when not anticipated at the local level, can be costly if the tender period expires prior to the expiry of the petition period.

Policy or information which clarifies this situation will greatly facilitate the expedient processing of debenture by-laws.

"353(1) When a municipality has constructed, purchased or acquired a public utility, sewer, sewerage works, paved street, concrete or bituminous walk, public building or other public works, a bridge, fire equipment, an asphalt paving plant or engineering equipment required for street or public utility improvements, the council may pass a by-law for borrowing any further sums that may be necessary to extend, rehabilitate, re-equip or improve it.

(2) In the case of a bridge, the borrowing may also be for the purpose of replacing the bridge.

(3) The extension, rehabilitation or improvement of a public work or paved street shall be deemed to include the construction of new traffic arteries including overpasses, underpasses, cloverleafs and flyovers.

(4) The extension, rehabilitation or improvement of a public utility, sewer, sewerage works, paved street, concrete or bituminous walks, public buildings or other public works shall be deemed to include the acquisition of any necessary land.

(5) The by-law does not require the assent of the proprietary electors or publication pursuant to section 324 if

(a) it is passed by a vote of 2/3 of the whole council, and

(b) it is approved by the Local Authorities Board."

RECOMMENDATION EIGHT: *Ambiguity in Local Improvement Legislation*

It is recommended that section 330(2) of the Municipal Government Act be repealed to eliminate the ambiguity with section 329(1)(b)(iii).

Section 329(1)(b) provides:

"329(1) A council may pass by-laws for borrowing, by the issue of debentures on the credit of the municipality at large, the money required to meet the whole or any part of the costs or estimated costs of any local improvement, but

(b) it is not necessary to obtain the assent of the proprietary electors to the passing of

(i) a by-law for raising the cost or estimated cost of a local improvement to be levied by special assessment,

(ii) a by-law for raising the cost or estimated cost for an extension of a sewer system or a water system originally constructed as a local improvement, or

(iii) a by-law for raising the cost or estimated cost of a local improvement, unless the share of the cost or estimated cost to be borne by the municipality at large is greater than 50% of the cost or estimated cost of the local improvement."

Section 330(2) provides:

"330(2) The portion payable by way of special assessment and the portion to be borne by the municipality at large may be provided for in one or more separate by-laws."

If two by-laws are used to apportion the costs of a local improvement under section 330(2), the provisions of section 329(1)(b)(iii) may be negated.

RECOMMENDATION NINE: *Multiple Local Improvement Projects*

It is recommended that section 149(2) of the Municipal Taxation Act be amended to provide that multiple local improvement projects in the same location and with the same term may be detailed on separate schedules within the same by-laws; details in each schedule to include:

(a) *a brief statement of the purpose*
(b) *the properties to be assessed*
(c) *the costs assessable to the properties*
(d) *the rates to be charged for the separate projects.*

It is proposed that the projects outlined in the attached schedules to the by-laws will be advertised as separate projects thereby affording all the affected property owners the opportunity to petition against all or any of the projects.

Frontage rates must be calculated using the current rate of interest in effect from the Alberta Municipal Financing Corporation at the time the projects are advertised.

It is further recommended that the advertising format be amended to indicate the rate per front foot/parcel subject to amendment at the time of the issuance of the debenture, or prior to, or immediately following the first levy.

RECOMMENDATION TEN: Land Acquisition

It is recommended that notwithstanding section 70 of the Local Authorities Board Act, municipalities be given the authority to include in the cost of a municipal project for which debentures are to be issued, the value of land

(a) *which has been acquired for the project;*

(b) *which has been acquired for another purpose and is transferred to the project,*

(c) *which has been, or is to be, acquired from another owner in exchange for land owned by the municipality,*

(d) *which is to be acquired for the project,*

at the current market value as determined by an independent appraisal, or the cost of acquisition, whichever is lower.

For the purpose of this recommendation, the municipal project does not include the purchase of land for development and/or resale for future residential, commercial or other industrial purposes.

RECOMMENDATION ELEVEN: *Guide to Application Manual*

It is recommended that the Board update its Guide to Applications manual on a regular basis to clarify the Board's procedures and requirements. It is also recommended that the Board establish more frequent personal contact between the members of the Board, municipal officials and municipal associations.

The Guide to Applications published by the Board is a necessary tool for municipal personnel in dealing with the complexities of the debenture approval process. Updating when and as required will assist the practitioner and expedite the approval process for the benefit of all concerned.

APPENDIX A

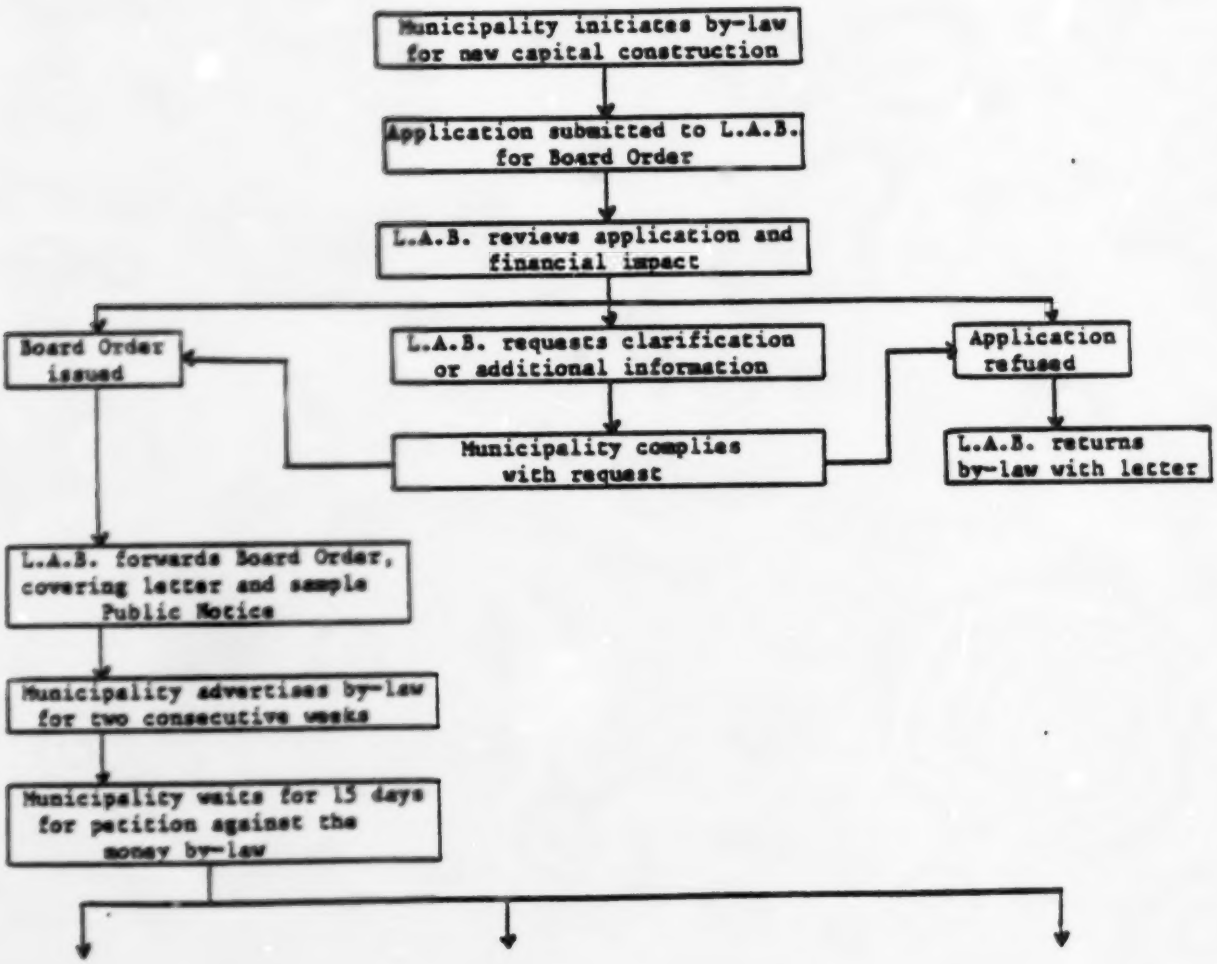
DEBENTURE BORROWING APPROVAL FLOW CHARTS

PRESENT

The attached flow charts set out the current processes of the Local Authorities Board in dealing with applications for the approval of debenture borrowing by municipalities under the authority of sections 324, 329 and 353 of the Municipal Government Act.

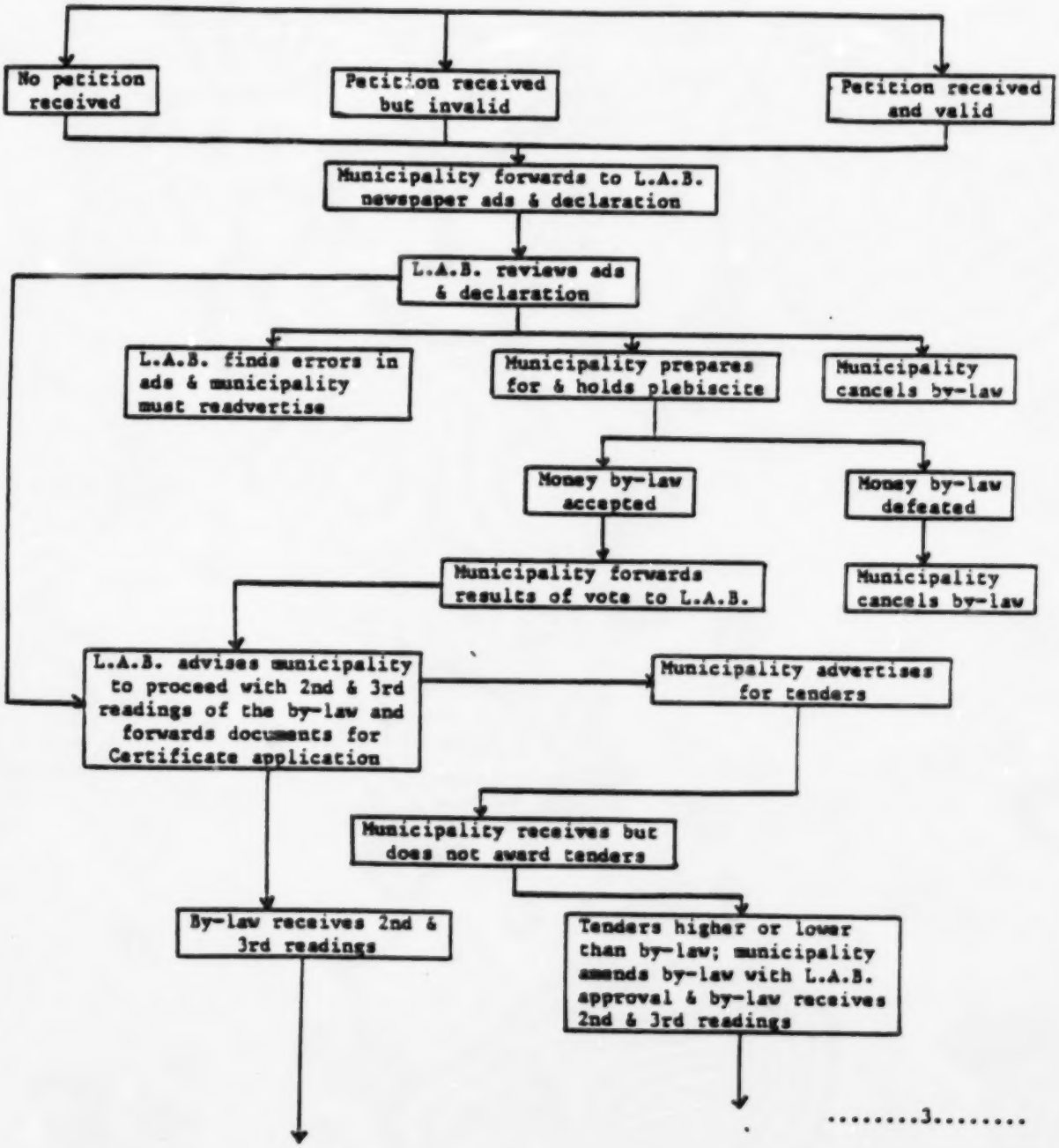
DEBENTURE BORROWING APPROVAL FLOW CHART

NEW CAPITAL CONSTRUCTION - SECTION 324, THE MUNICIPAL GOVERNMENT ACT


Municipality initiates by-law for new capital construction
Application submitted to L.A.B. for Board Order
L.A.B. reviews application and financial impact
Board Order issued
L.A.B. requests clarification or additional information
Application refused
Municipality complies with request
L.A.B. returns by-law with letter
L.A.B. forwards Board Order, covering letter and sample Public Notice
Municipality advertises by-law for two consecutive weeks
Municipality waits for 15 days for petition against the money by-law

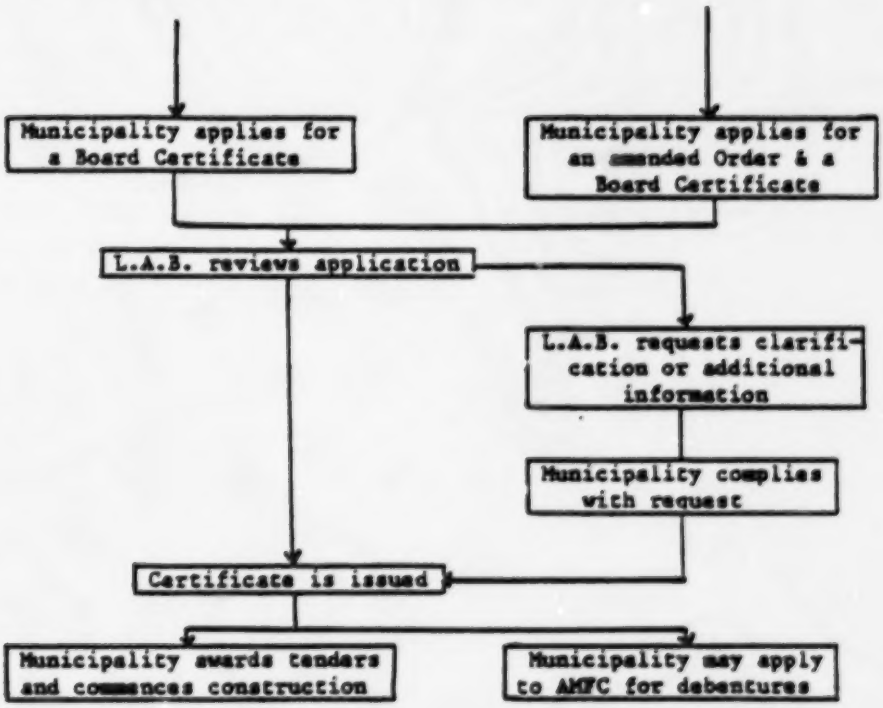
.....2.....

Section 324, The Municipal Government Act
Screen 2


No petition received
Petition received but invalid
Petition received and valid
Municipality forwards to L.A.B. newspaper ads & declaration
L.A.B. reviews ads & declaration
L.A.B. finds errors in ads & municipality must readvertise
Municipality prepares for & holds plebiscite
Municipality cancels by-law
Money by-law accepted
Money by-law defeated
Municipality forwards results of vote to L.A.B.
Municipality cancels by-law
L.A.B. advises municipality to proceed with 2nd & 3rd readings of the by-law and forwards documents for Certificate application
Municipality advertises for tenders
Municipality receives but does not award tenders
By-law receives 2nd & 3rd readings
Tenders higher or lower than by-law; municipality amends by-law with L.A.B. approval & by-law receives 2nd & 3rd readings

.....3.....

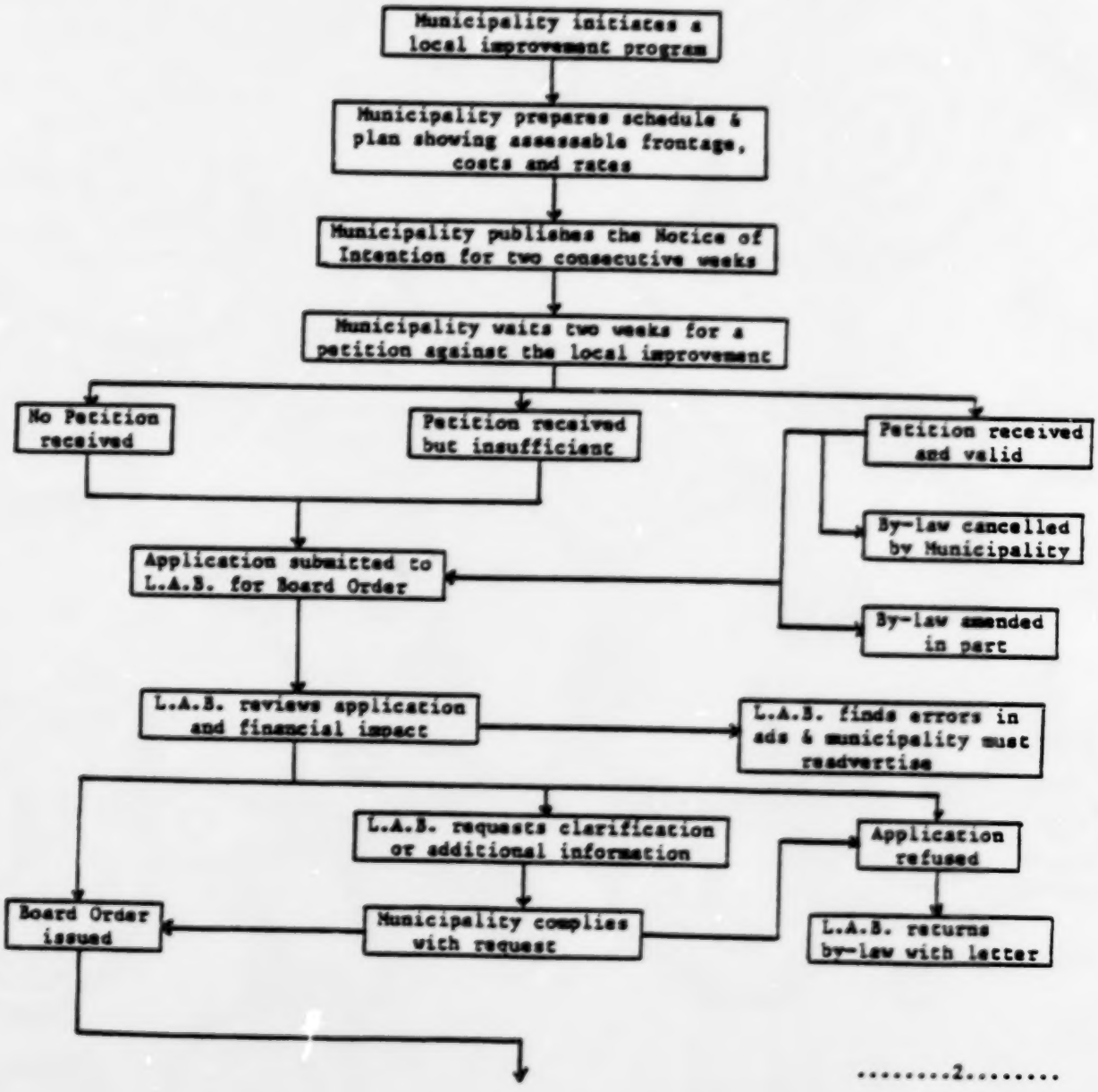
Section 324, The Municipal Government Act
Screen 3


Municipality applies for a Board Certificate
Municipality applies for an amended Order & a Board Certificate
L.A.B. reviews application
L.A.B. requests clarification or additional information
Municipality complies with request
Certificate is issued
Municipality awards tenders and commences construction
Municipality may apply to AMFC for debentures

DEBENTURE BORROWING APPROVAL FLOW CHART

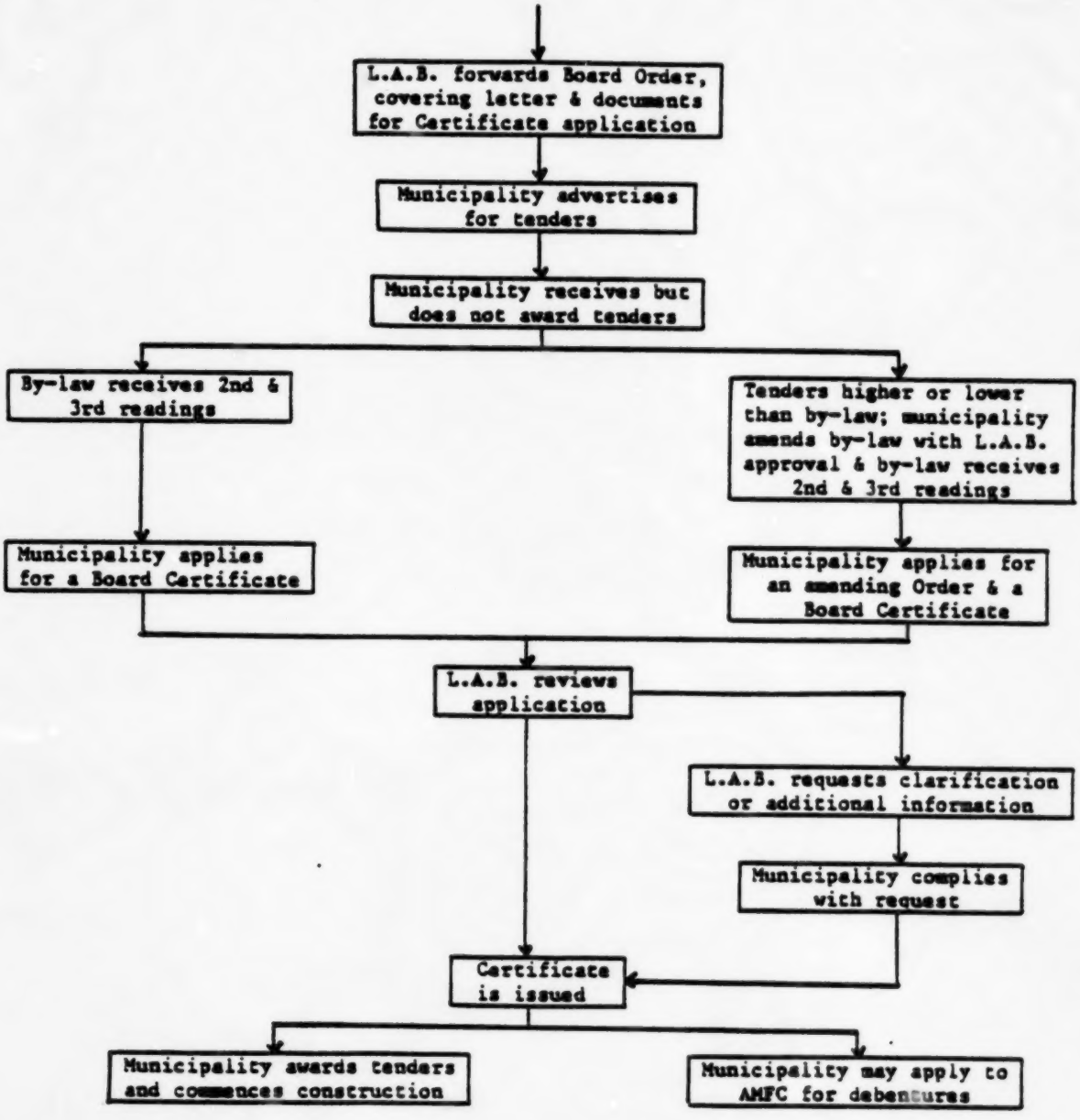
LOCAL IMPROVEMENT PROGRAM - BY COUNCIL

SECTION 329, THE MUNICIPAL GOVERNMENT ACT & SECTION 157, THE MUNICIPAL TAXATION ACT


Municipality initiates a local improvement program
Municipality prepares schedule & plan showing assessable frontage, costs and rates
Municipality publishes the Notice of Intention for two consecutive weeks
Municipality waits two weeks for a petition against the local improvement
No Petition received
Petition received but insufficient
Petition received and valid
By-law cancelled by Municipality
By-law amended in part
Application submitted to L.A.B. for Board Order
L.A.B. reviews application and financial impact
L.A.B. finds errors in ads & municipality must readvertise
L.A.B. requests clarification or additional information
Application refused
Board Order issued
Municipality complies with request
L.A.B. returns by-law with letter

.....2.....

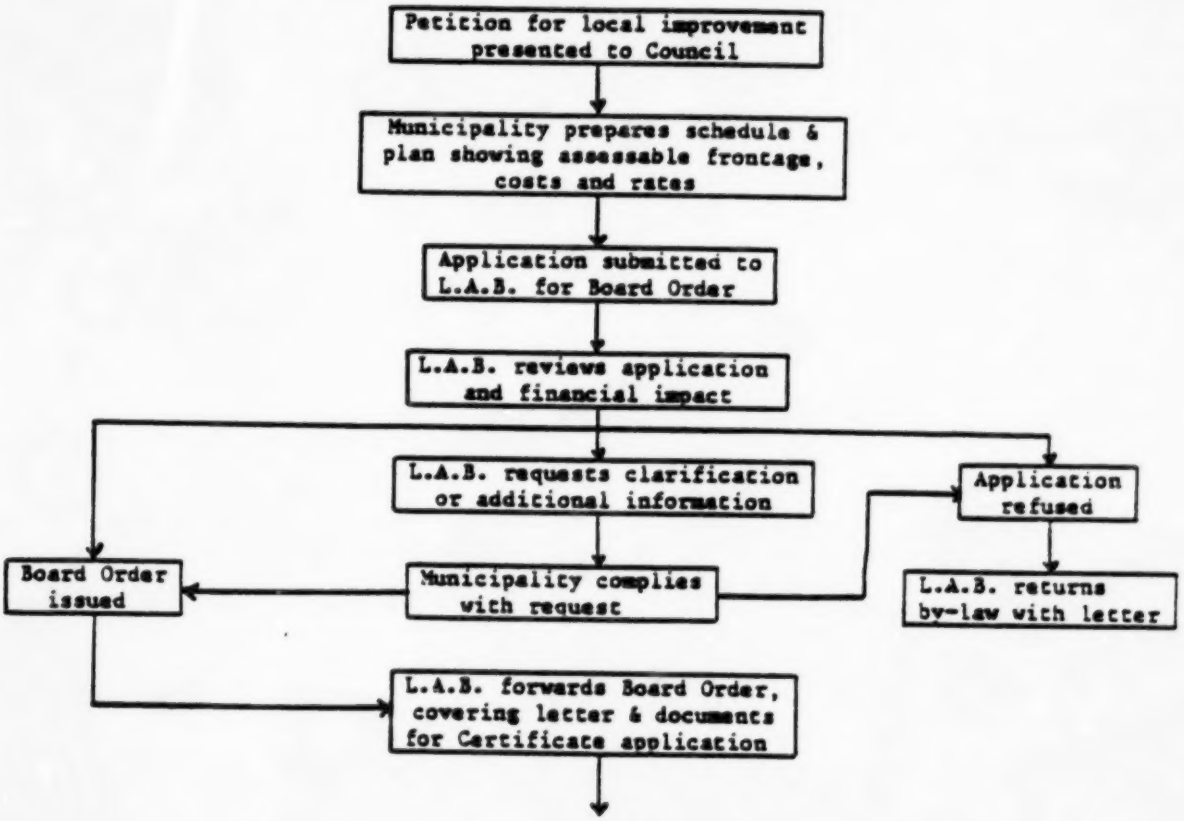
Section 329, The Municipal Government Act
& Section 157, The Municipal Taxation Act
Screen 2


L.A.B. forwards Board Order, covering letter & documents for Certificate application
Municipality advertises for tenders
Municipality receives but does not award tenders
By-law receives 2nd & 3rd readings
Tenders higher or lower than by-law; municipality amends by-law with L.A.B. approval & by-law receives 2nd & 3rd readings
Municipality applies for a Board Certificate
Municipality applies for an amending Order & a Board Certificate
L.A.B. reviews application
L.A.B. requests clarification or additional information
Municipality complies with request
Certificate is issued
Municipality awards tenders and commences construction
Municipality may apply to AMFC for debentures

DEBENTURE BORROWING APPROVAL FLOW CHART

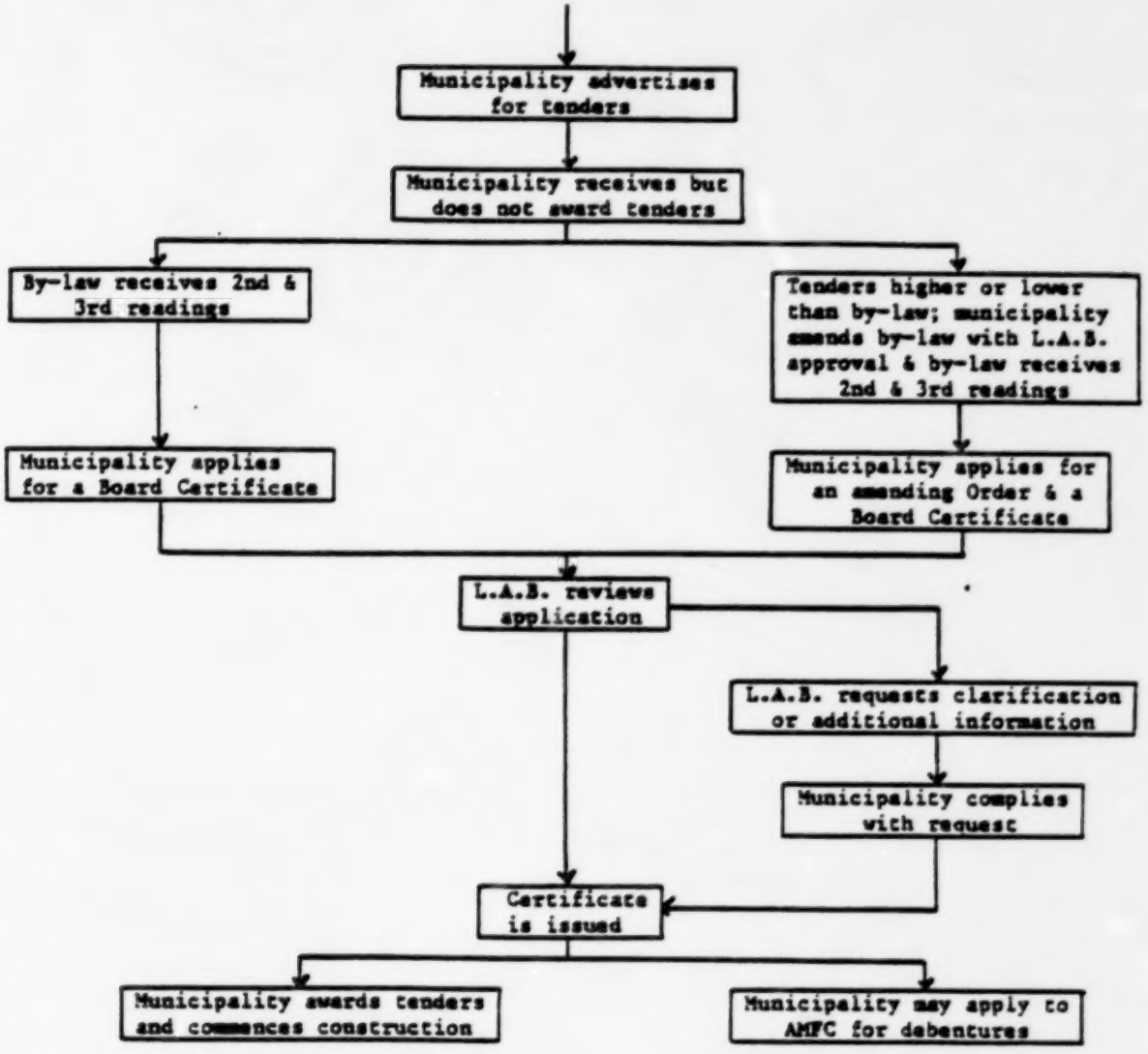
LOCAL IMPROVEMENT PROGRAM - BY PETITION

SECTION 329, THE MUNICIPAL GOVERNMENT ACT & SECTION 156, THE MUNICIPAL TAXATION ACT


Petition for local improvement presented to Council
Municipality prepares schedule & plan showing assessable frontage, costs and rates
Application submitted to L.A.B. for Board Order
L.A.B. reviews application and financial impact
L.A.B. requests clarification or additional information
Application refused
Board Order issued
Municipality complies with request
L.A.B. returns by-law with letter
L.A.B. forwards Board Order, covering letter & documents for Certificate application

.....2.....

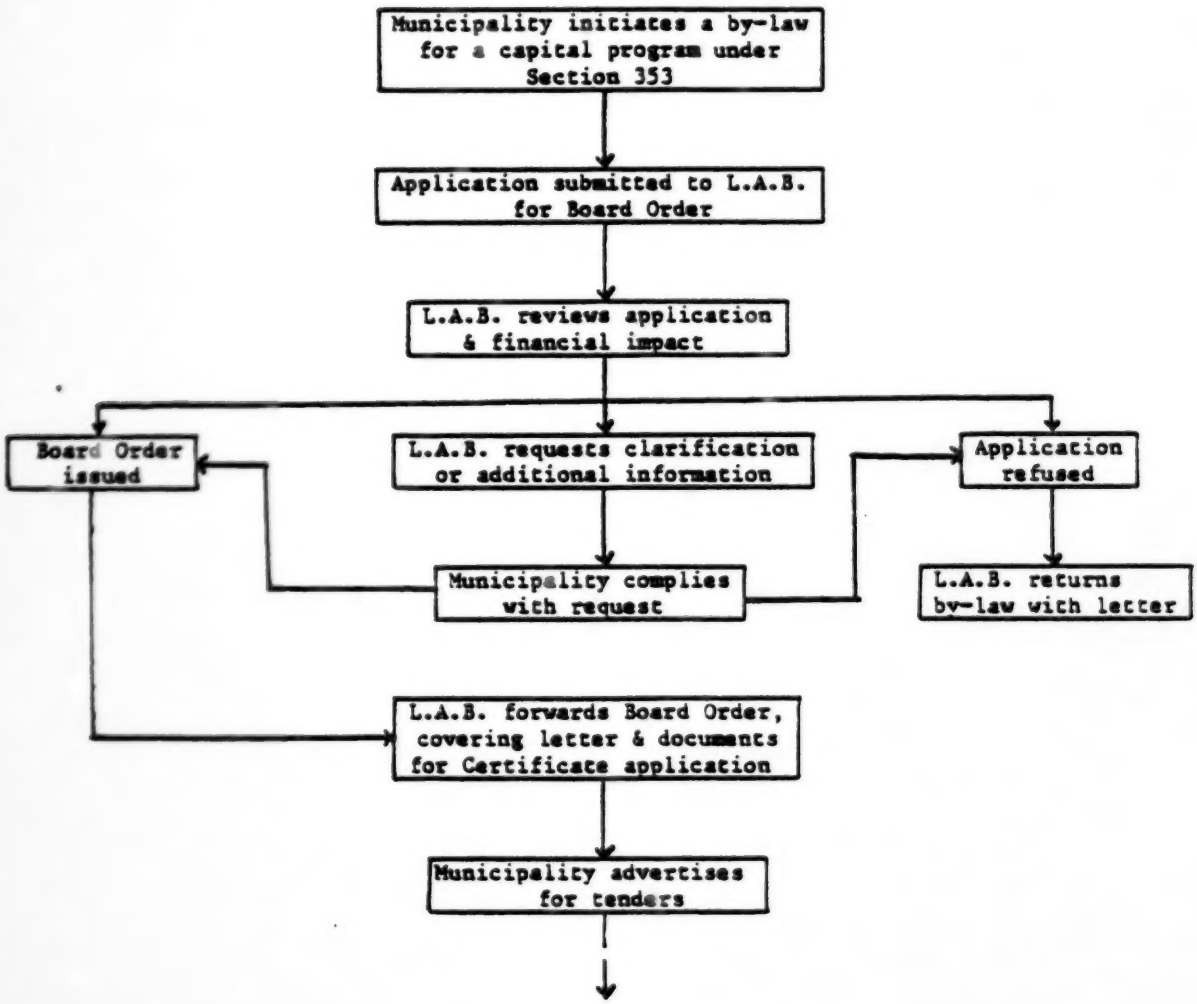
Section 329, The Municipal Government Act
& Section 156, The Municipal Taxation Act
Screen 2


Municipality advertises for tenders
Municipality receives but does not award tenders
By-law receives 2nd & 3rd readings
Tenders higher or lower than by-law; municipality amends by-law with L.A.B. approval & by-law receives 2nd & 3rd readings
Municipality applies for a Board Certificate
Municipality applies for an amending Order & a Board Certificate
L.A.B. reviews application
L.A.B. requests clarification or additional information
Municipality complies with request
Certificate is issued
Municipality awards tenders and commences construction
Municipality may apply to AMFC for debentures

DEBENTURE BORROWING APPROVAL FLOW CHART

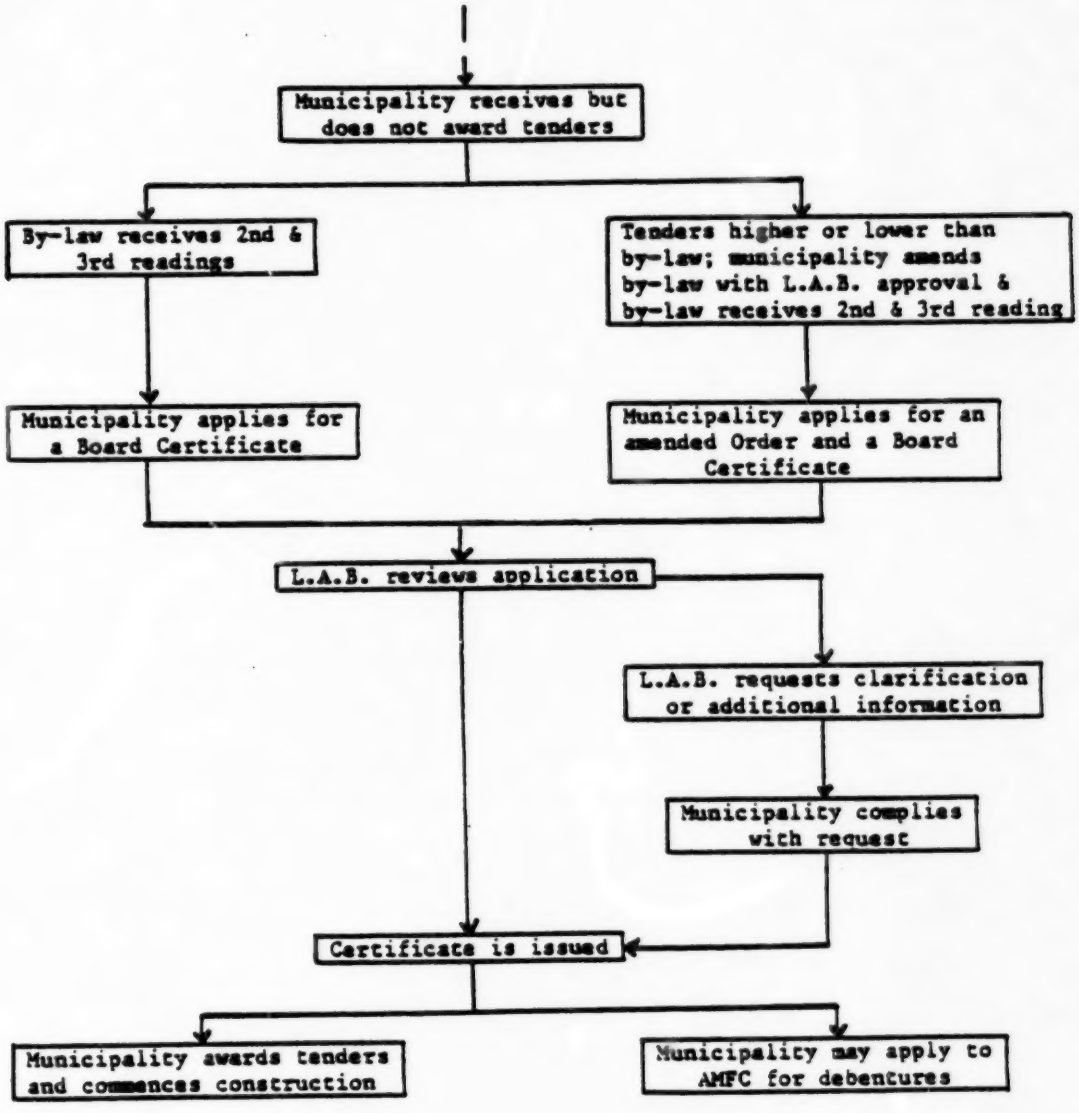
EXTENSION, REHABILITATION, RE-EQUIPPING OR IMPROVEMENT TO AN EXISTING FACILITY

SECTION 353 - THE MUNICIPAL GOVERNMENT ACT


Municipality initiates a by-law for a capital program under Section 353
Application submitted to L.A.B. for Board Order
L.A.B. reviews application & financial impact
Board Order issued
L.A.B. requests clarification or additional information
Application refused
Municipality complies with request
L.A.B. returns by-law with letter
L.A.B. forwards Board Order, covering letter & documents for Certificate application
Municipality advertises for tenders

.....2.....

Section 353 - The Municipal Government Act
Screen 2


Municipality receives but does not award tenders
By-law receives 2nd & 3rd readings
Tenders higher or lower than by-law; municipality amends by-law with L.A.B. approval & by-law receives 2nd & 3rd reading
Municipality applies for a Board Certificate
Municipality applies for an amended Order and a Board Certificate
L.A.B. reviews application
L.A.B. requests clarification or additional information
Municipality complies with request
Certificate is issued
Municipality awards tenders and commences construction
Municipality may apply to AMFC for debentures

APPENDIX B

DEBENTURE BORROWING APPROVAL FLOW CHARTS

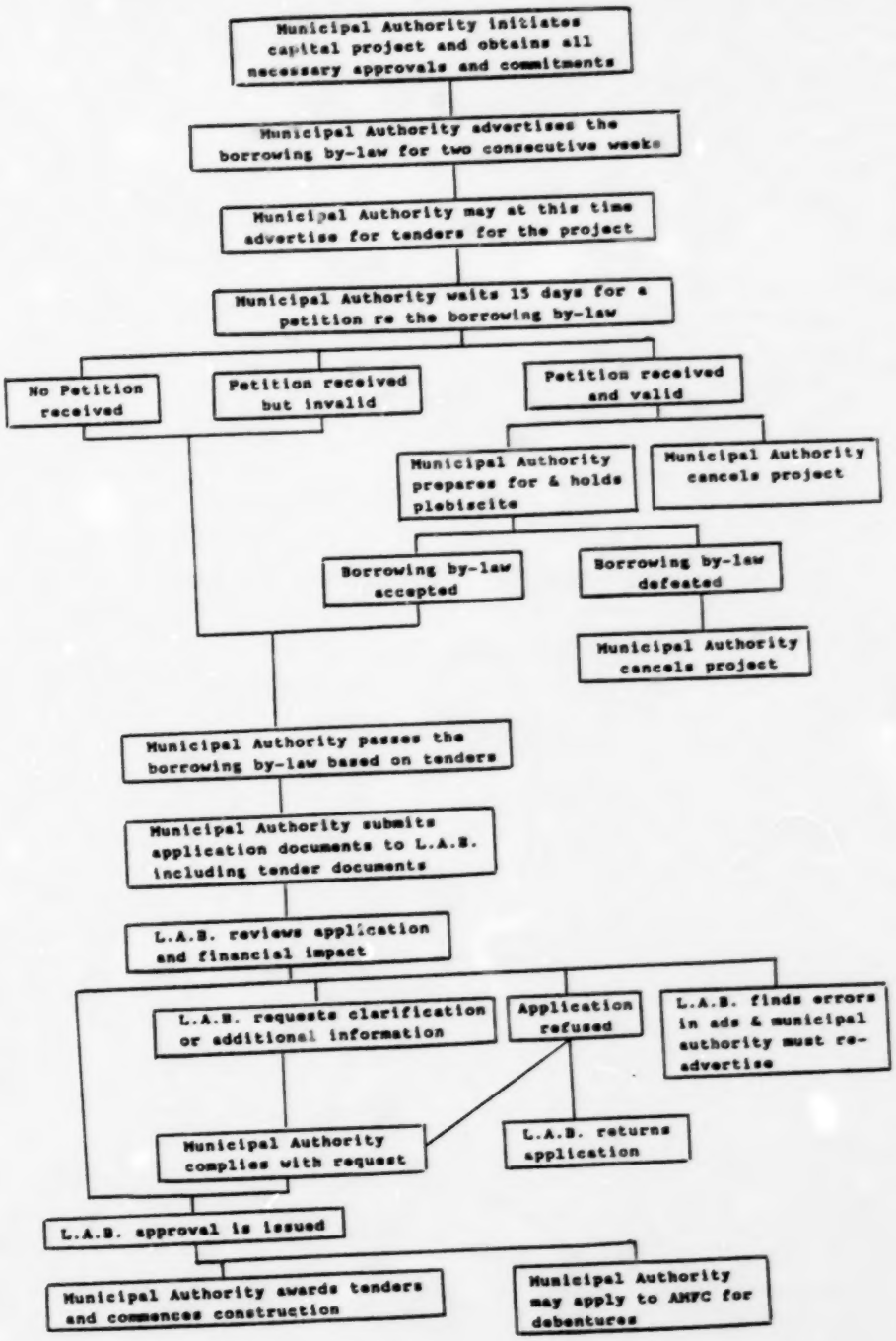
PROPOSED

The attached flow charts set out the proposed processes of the Local Authorities Board in dealing with applications for approval of debenture borrowing by municipalities under the authority of sections 324, 329 and 353 of the Municipal Government Act.

October/83

PROPOSED DEBENTURE BORROWING APPROVAL FLOW CHART

SECTION 324, THE MUNICIPAL GOVERNMENT ACT - NEW CAPITAL CONSTRUCTION

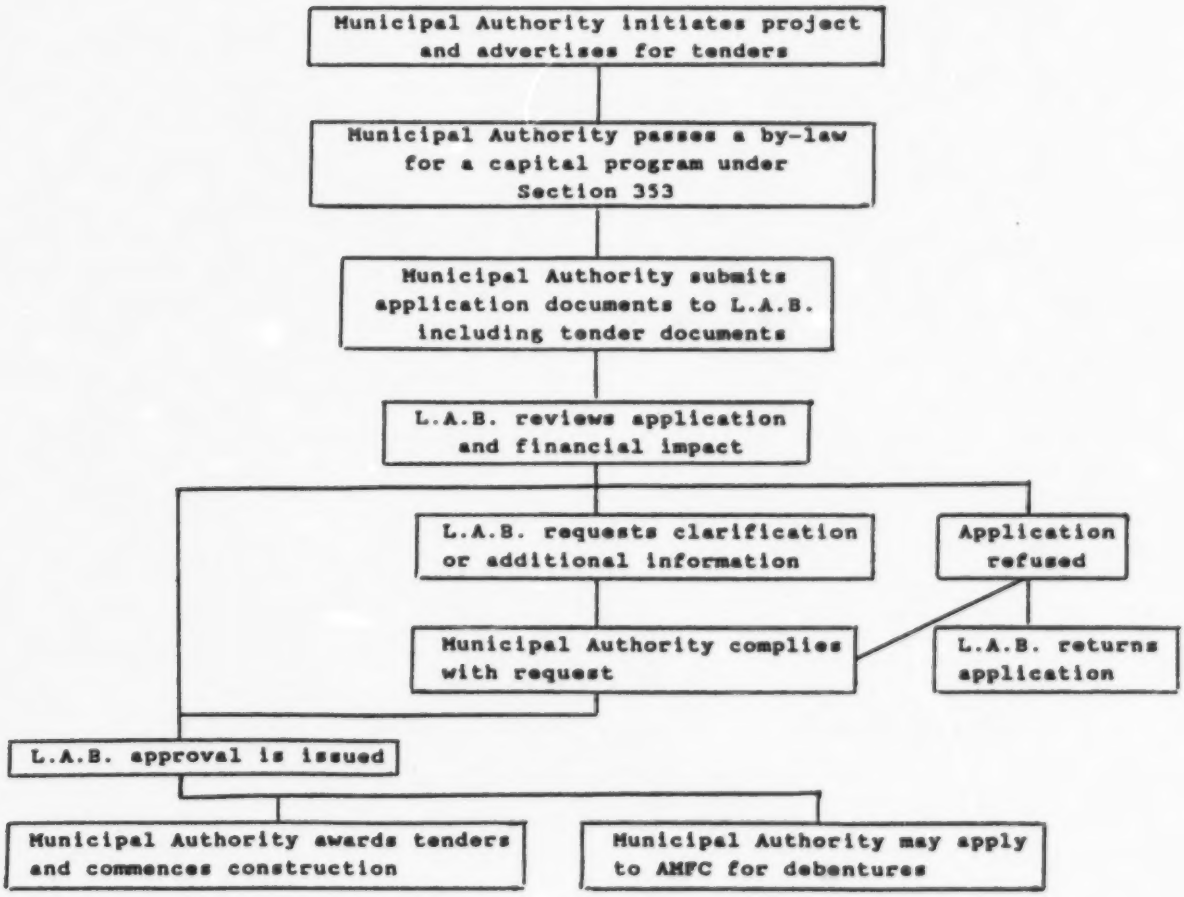

Municipal Authority initiates capital project and obtains all necessary approvals and commitments
Municipal Authority advertises the borrowing by-law for two consecutive weeks
Municipal Authority may at this time advertise for tenders for the project
Municipal Authority waits 15 days for a petition re the borrowing by-law
No Petition received
Petition received but invalid
Petition received and valid
Municipal Authority prepares for & holds plebiscite
Municipal Authority cancels project
Borrowing by-law accepted
Borrowing by-law defeated
Municipal Authority cancels project
Municipal Authority passes the borrowing by-law based on tenders
Municipal Authority submits application documents to L.A.B. including tender documents
L.A.B. reviews application and financial impact
L.A.B. requests clarification or additional information
Application refused
L.A.B. finds errors in ads & municipal authority must re-advertise
Municipal Authority complies with request
L.A.B. returns application
L.A.B. approval is issued
Municipal Authority awards tenders and commences construction
Municipal Authority may apply to AMFC for debentures

October/83

PROPOSED DEBENTURE BORROWING APPROVAL FLOW CHART

EXTENSION, REHABILITATION, RE-EQUIPPING OR IMPROVEMENT TO AN EXISTING FACILITY

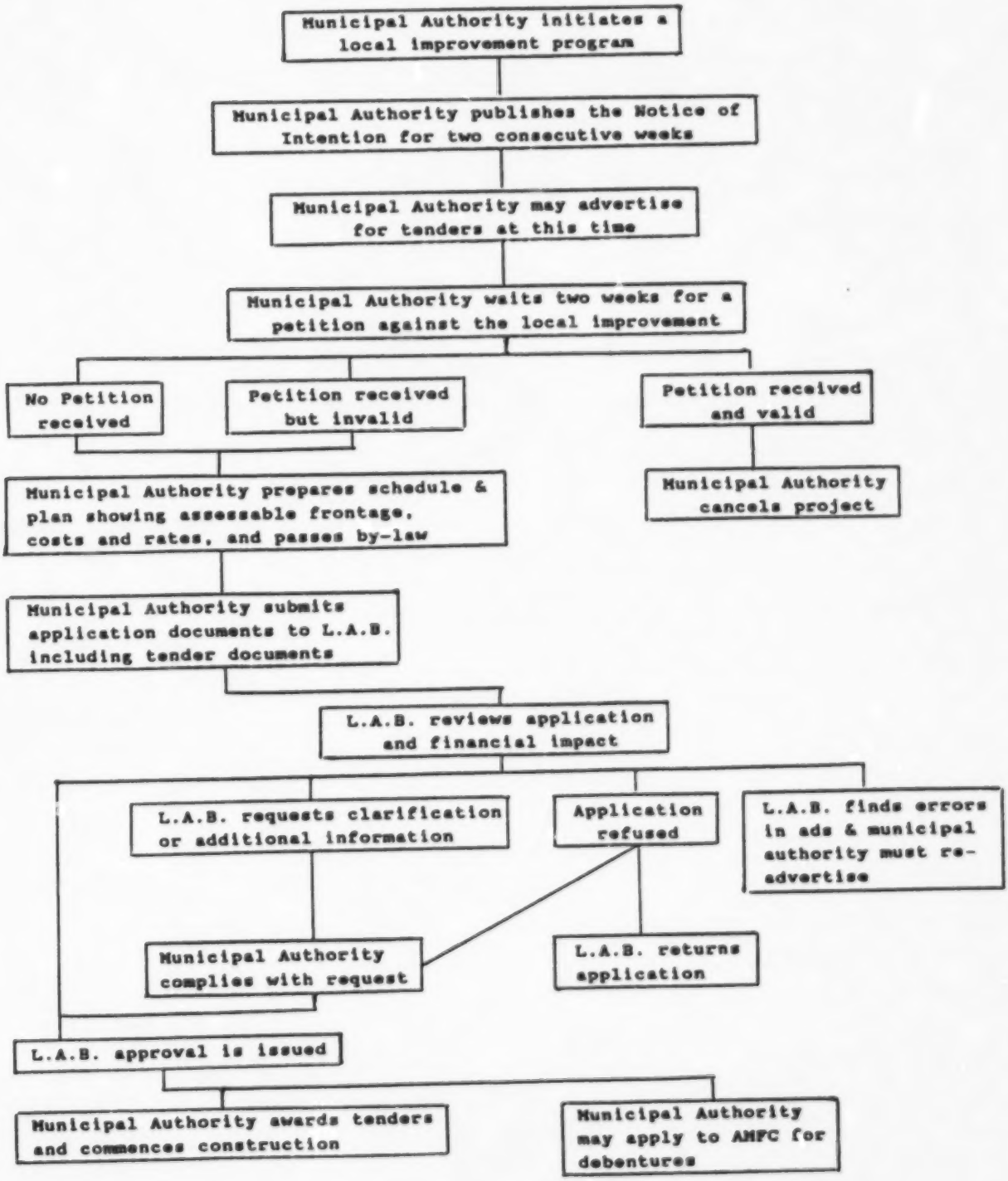
SECTION 353, THE MUNICIPAL GOVERNMENT ACT


Municipal Authority initiates project and advertises for tenders
Municipal Authority passes a by-law for a capital program under Section 353
Municipal Authority submits application documents to L.A.B. including tender documents
L.A.B. reviews application and financial impact
L.A.B. requests clarification or additional information
Application refused
Municipal Authority complies with request
L.A.B. returns application
L.A.B. approval is issued
Municipal Authority awards tenders and commences construction
Municipal Authority may apply to AMFC for debentures

PROPOSED DEBENTURE BORROWING APPROVAL FLOW CHART

LOCAL IMPROVEMENT PROGRAM - BY COUNCIL

SECTION 329, THE MUNICIPAL GOVERNMENT ACT
SECTION 157, THE MUNICIPAL TAXATION ACT

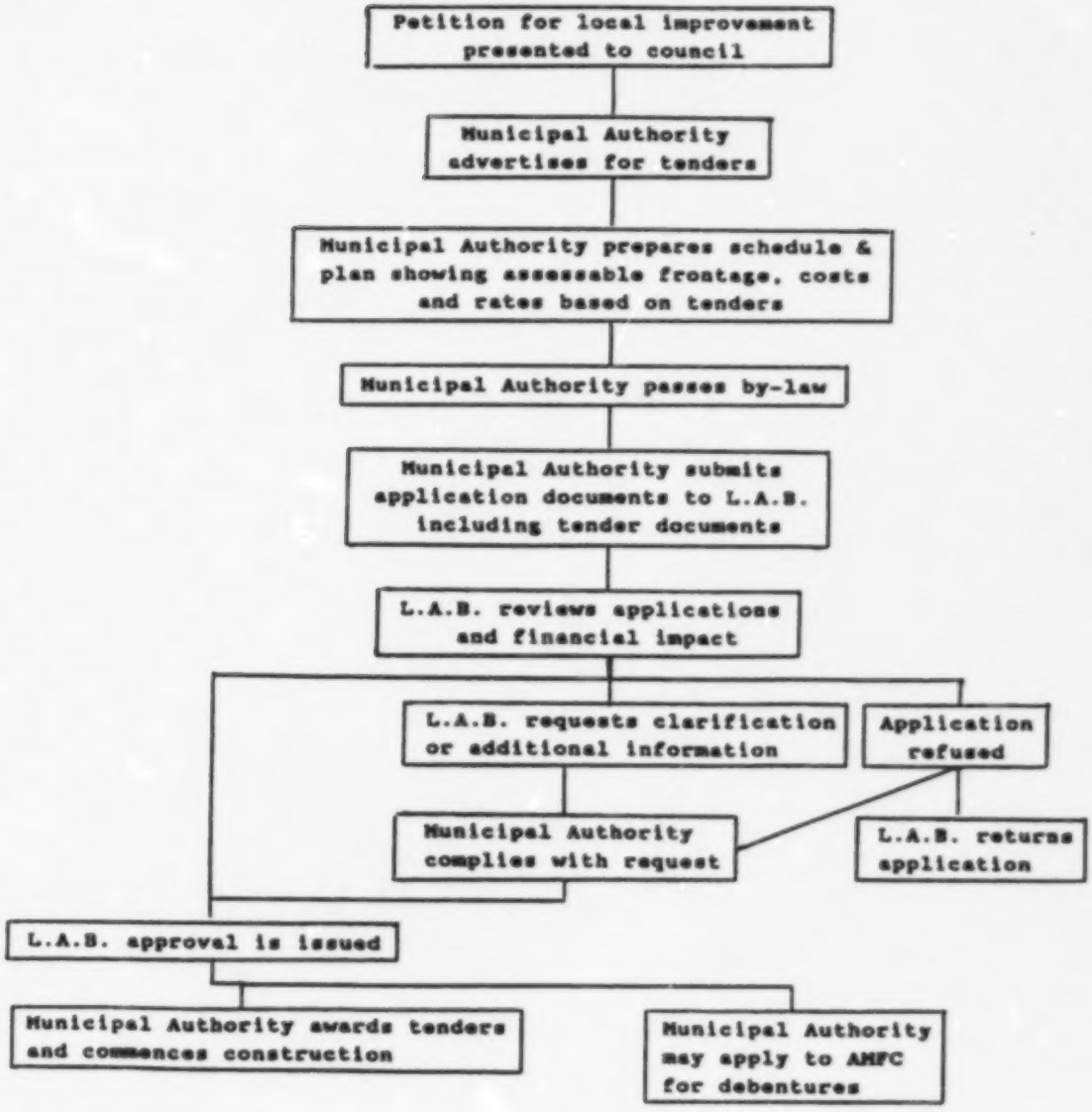

Municipal Authority initiates a local improvement program
Municipal Authority publishes the Notice of Intention for two consecutive weeks
Municipal Authority may advertise for tenders at this time
Municipal Authority waits two weeks for a petition against the local improvement
No Petition received
Petition received but invalid
Petition received and valid
Municipal Authority cancels project
Municipal Authority prepares schedule & plan showing assessable frontage, costs and rates, and passes by-law
Municipal Authority submits application documents to L.A.B. including tender documents
L.A.B. reviews application and financial impact
L.A.B. requests clarification or additional information
Application refused
L.A.B. finds errors in ads & municipal authority must re-advertise
Municipal Authority complies with request
L.A.B. returns application
L.A.B. approval is issued
Municipal Authority awards tenders and commences construction
Municipal Authority may apply to AMFC for debentures

October/83

PROPOSED DEBENTURE BORROWING APPROVAL FLOW CHART

LOCAL IMPROVEMENT PROGRAM - BY PETITION

SECTION 329, THE MUNICIPAL GOVERNMENT ACT
SECTION 156, THE MUNICIPAL TAXATION ACT


Petition for local improvement presented to council
Municipal Authority advertises for tenders
Municipal Authority prepares schedule & plan showing assessable frontage, costs and rates based on tenders
Municipal Authority passes by-law
Municipal Authority submits application documents to L.A.B. including tender documents
L.A.B. reviews applications and financial impact
L.A.B. requests clarification or additional information
Application refused
Municipal Authority complies with request
L.A.B. returns application
L.A.B. approval is issued
Municipal Authority awards tenders and commences construction
Municipal Authority may apply to AMFC for debentures

POOR

QUALITY

ORIGINAL